

CITY AND COUNTY OF SAN FRANCISCO



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November 27, 2018

VIA ELECTRONIC AND U.S. MAIL

Eddie Orton and James Madsen
Historic Pier 70, LLC
c/o Orton Development, Inc.
3049 Research Drive
Richmond, CA 94806
eorton@ortondevelopment.com
jmadsen@ortondevelopment.com

Mark D. Lubin
Lubin Olson & Niewiadomski LLP
Transamerica Pyramid
600 Montgomery Street, 14th Floor
San Francisco, CA 94111
mlubin@lubinolson.com

Re: Juul Labs, Inc.'s Use and Occupancy of Port Property

Gentlemen:

As you are undoubtedly aware, electronic cigarettes and vaping products have come under heightened scrutiny by health advocates and government agencies as to their use by children and the health hazards that early nicotine addiction poses. Indeed, the Federal Drug Administration ("FDA") has voiced concern over vaping, with FDA Commissioner Dr. Scott Gottlieb declaring "youth vaping" to be a "pernicious public health problem." <https://www.nytimes.com/2018/11/08/health/vaping-ecigarettes-fda.html>. Amid the crescendo of health worries regarding the proliferation of vaping and electronic cigarettes among children, the FDA recently took steps to ban the sale of electronic cigarettes in retail stores and to support additional age verification safeguards for online sales, steps largely aimed at Juul Labs, Inc. ("Juul").

The use of electronic cigarettes presents other health hazards to children and adults. Liquid nicotine, which is involved in the testing and production of e-cigarettes, is a hazardous substance. There are health and safety concerns about the handling of that substance and the rise in nicotine poisoning of children due to their use of electronic cigarettes. Further, there is evidence that the chemicals found in e-cigarette liquid, specifically flavorings and aerosols, are not safe for users of these products.

Juul maintains its corporate headquarters in San Francisco. It has a significant and increasing presence on City-owned property, occupying more than 60,000 square feet of space at

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Pier 70. Historic P70 Master Tenant, LLC (the "Master Tenant") leases part of Pier 70 from the City, through the Port of San Francisco ("Port"), under a Master Lease dated as of July 29, 2015 (as amended, the "Master Lease"). We understand that Juul began occupying space at Pier 70, including Building 104, through a sub-sublease dated as of September 22, 2017 (as amended, the "Initial Juul Sublease") from Tea Living, Inc. ("Tea Living"). But later, the Master Tenant entered into a sublease dated August 27, 2018 directly with Juul (as amended, the "Master Juul Sublease") for an additional 16,000 square feet of space at Pier 70, including Building 102 and 123, and for Building 104 when the Initial Juul Sublease expires.

The community has expressed outrage at Juul's occupancy on Port property. Community members gave testimony at the November 13, 2018 Port Commission meeting expressing "disgust" and "displeasure" about the appropriateness of leasing historic Port property to Juul, describing this use of public land "fails the community" and is "unconscionable." In addition to the live testimony, Port Executive Director Elaine Forbes mentioned at the hearing that the Port had received letters critical of the leases with Juul and that her staff had attended various community meetings where community members expressed dismay and concern regarding Juul's business practices and Juul's presence on Port property. These comments illustrate the potential adverse financial impacts that Juul's occupancy may have on the proprietary interests of the City, including its Port, in its property. For instance, the backlash from Juul's tenancy could negatively affect the Master Tenant's ability to maximize revenues from the historic Pier 70 premises and therefore reduce potential participation rent payments to the Port under the Master Lease.

As City Attorney for the City and County of San Francisco I am concerned about the activities of Juul on Port property, of the Master Tenant's actions in facilitating those activities, and the impacts on the City's interests. Working with my clients including the Port and Department of Public Health I hope to enlist your assistance to ensure that Juul complies with the terms and conditions of all lease agreements for Port property, particularly the Master Lease with the Port and the permitted uses in that lease, and also complies with all local and state laws governing tobacco products and hazardous materials, including nicotine, and electronic cigarette and flavored tobacco product advertising, manufacturing, and sales.

To those ends, I am writing to request any and all information you have concerning the following:

- (1) Juul's proposed and actual uses of its leased space at Buildings 102, 104, and 123 on Pier 70 (collectively, the "Leased Premises"), including, but not limited to, any retail, advertising, internet marketing, showroom, and production, research and development uses;
- (2) any requests for approval by the Master Tenant, or non-disturbance agreements by the Port or Master Tenant, of any subleases or sub-subleases by Juul of the Leased Premises, including the Initial Juul Sublease and the Master Juul Sublease;
- (3) all plans for tenant improvements by or on behalf of Juul in each of the Leased Premises;

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- (4) for the Initial Juul Sublease and the Master Juul Sublease, compliance with Section 20.5 of the Master Lease, which sets forth the requirements for "Pre-Approved Subleases";
- (5) Juul's compliance with Section 43.5 of the Master Lease and correlative provisions of the Initial Juul Sublease and Master Juul Sublease, prohibiting the sale and advertising of tobacco products on the Leased Premises;
- (6) Juul's compliance with Sections 4 and 9 of the Master Lease, Section 9 of the Master Juul Sublease and Sections 1.7 and 6.2 of the Initial Juul Sublease, all relating to permitted uses and compliance with laws at the Leased Premises;
- (7) any concerns expressed by existing or prospective tenants or other occupants at Pier 70 regarding the presence of Juul on the Leased Premises, or any protests or other activities by members of the public at Pier 70 objecting to Juul's operations at the Leased Premises;
- (8) Juul's compliance with Sections 21 and 22 of the Master Lease, Sections 15 and 29 of the Juul Master Lease and any applicable provisions of the Initial Juul Sublease, all relating to the handling of hazardous materials on the Leased Premises;
- (9) Juul's compliance with the following San Francisco Health Code provisions as to its operations at the Leased Premises: Article 12 relating to the City's regulation of cigar factories; Article 19N relating to the City's restrictions on the sale and use of electronic cigarettes; Article 19Q, adopted by the voters as Proposition Q in June 2018, relating to the City's ban on the sale of flavored tobacco products; and Articles 21 and 22 relating to the requirements for handling hazardous materials such as liquid nicotine above certain thresholds and disposal of hazardous waste;
- (10) Juul's compliance with Chapters 6.5 and 6.95 of Division 20 of the California Health and Safety Code relating to the requirements for handling hazardous materials such as liquid nicotine above certain thresholds at the Leased Premises and disposing of hazardous waste;
- (11) Juul's compliance with Section 6404.5 of the California Labor Code relating to restrictions on the use of electronic cigarettes; and
- (12) Juul's compliance with the Safe Drinking Water and Toxic Enforcement Act of 1986, adopted by the voters as Proposition 65, relating to warnings before exposure to chemicals known to cause cancer or reproductive toxicity

Please provide the information and documents above as soon as possible, but not later than the close of business on December 12, 2018. Should you have any questions or concerns regarding this request, please contact Yvonne Meré, Chief Attorney, Complex and Affirmative Litigation Team in my office, at (415) 554-3874.

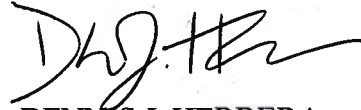
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Thank you for your anticipated cooperation. I hope and expect that you will promptly comply with this request so that I do not need to invoke my subpoena or other enforcement powers.

Sincerely,

A handwritten signature in black ink, appearing to read "D.J. Herrera", with a stylized flourish at the end.

DENNIS J. HERRERA
City Attorney

cc: Elaine Forbes, Port Director
Greg Wagner, Acting Director of Public Health
Juul Labs, Inc.
Tea Living, Inc.
Jesse Smith, Chief Assistant City Attorney
Yvonne Meré, Chief Attorney, Complex and Affirmative Litigation Team
Michelle Sexton, Port General Counsel
Anne Pearson, Deputy City Attorney